



March 23, 2001

Ms. Elizabeth West
Senior Personnel Attorney
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR2001-1023A

Dear Ms. West:

You advise this office that in Open Records Letter No. 2001-0270 (2001), we allowed the Texas Natural Resource Conservation Commission (the "commission") to withhold two test questions that we told you to release in Open Records Letter No. 2001-1023 (2001). You now seek guidance in complying with ORL 2001-1023.

In ORL 2001-0270, we found that the commission could withhold from required public disclosure based on section 552.122(b) of the Government Code test questions 10, 11, 13, 14, and 15 which were asked during the interview for Job Posting No. 01014. In ORL 2001-1023, which concerned a request for the test questions for the same job posting, we directed the commission to withhold from disclosure test questions 13, 14, 15, and 23 based on section 552.122(b) of the Government Code, but to release test questions 10 and 11. After reviewing the two rulings, we conclude that you may withhold from the requestor in ORL 2001-1023 test questions 10 and 11 pursuant to ORL 2001-0270. Further, you may withhold test questions 13, 14, 15, and 23 in accordance with ORL 2001-1023. Therefore, ORL 2001-1023 is overruled to the extent that it conflicts with this ruling. We note that you did not inform this office that you had previously requested a decision for the same test questions. In the future, please inform this office of the existence of a pending request in this office for the same information so that we can combine the two requests.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 145020a

cc: Mr. Mark Blomquist
3102 Ridgemoor
Garland, Texas 75044